

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/18/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

J. Pinter
Deputy

LC 2001-000121

FILED: _____

STATE OF ARIZONA

GERALDINE R MATTERN

v.

MICHAEL FLOYD GUTHRIE

JEREMY PHILLIPS

REMAND DESK CR-CCC
FINANCIAL SERVICES-CCC
TEMPE CITY COURT

MINUTE ENTRY

This Court has jurisdiction over this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since receipt of Appellee's memorandum on 09/27/01. This Court heard oral argument on 08/22/01. The Court has considered the arguments of counsel, the record of the proceedings from the Tempe City Court, and the memoranda submitted.

Appellant was arrested and charged on 02/12/00 with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor violation of A.R.S. Section 28-1381(A)(1) and Driving with a Blood Alcohol Content Greater than .10, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2). The state filed a motion in limine requesting that the trial court preclude Appellant from presenting testimony regarding breath-to-blood ratios. The state argued in their motion that Arizona's old DUI statute before its 1988 amendment referred to

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/18/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

J. Pinter
Deputy

LC 2001-000121

alcohol content by way of "rate of blood alcohol." Before 1988, prosecutors were required to produce testimony which converted breathalyzer or intoxilyzer readings to a "blood alcohol" percentage. The state further argued that under the new law since 1988, alcohol concentration, "if defined as a percentage means either (a) the number of grams of alcohol per 100 milliliters of blood or (b) the number of grams of alcohol per 210 liters of breath."¹ The effect of the 1988 amendment to the DUI statute criminalized driving with a specific blood alcohol level or a specific breath alcohol level. The trial judge concurred with the state and granted the state's motion in limine after hearing oral argument and accepting Appellant's offer of proof. Thereafter, both parties waived their rights to a jury trial and submitted the case to the Court based upon stipulated police reports and other exhibits. Appellant was found guilty of both charges and filed a timely notice of appeal after sentencing.

The only issue presented on appeal is whether the trial judge erred in granting state's motion in limine precluding any evidence of variable breath-to-blood ratios.

Trial judges have significant discretion to determine whether proposed evidence is relevant and admissible under Rule 402², and absent an abuse of a trial court's discretion, its decision should not be overturned on appeal.³ Given the 1988 amendment to the DUI statutes, which changed the definition of alcohol content to breath, alcohol, or blood alcohol, it is difficult to see the relevance of Appellant's proffered testimony. The trial judge correctly excluded this evidence as irrelevant.

IT IS ORDERED affirming the judgments of guilt and sentences imposed by the trial court.

¹ State's motion in limine, page 2, paragraph 2.

² Arizona Rules of Evidence.

³ State v. Salazar, 173 Ariz. 399, 844 P.2d 566 (1992)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/18/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

J. Pinter
Deputy

LC 2001-000121

IT IS FURTHER ORDERED remanding this case back to the Tempe
City Court for all future proceedings.